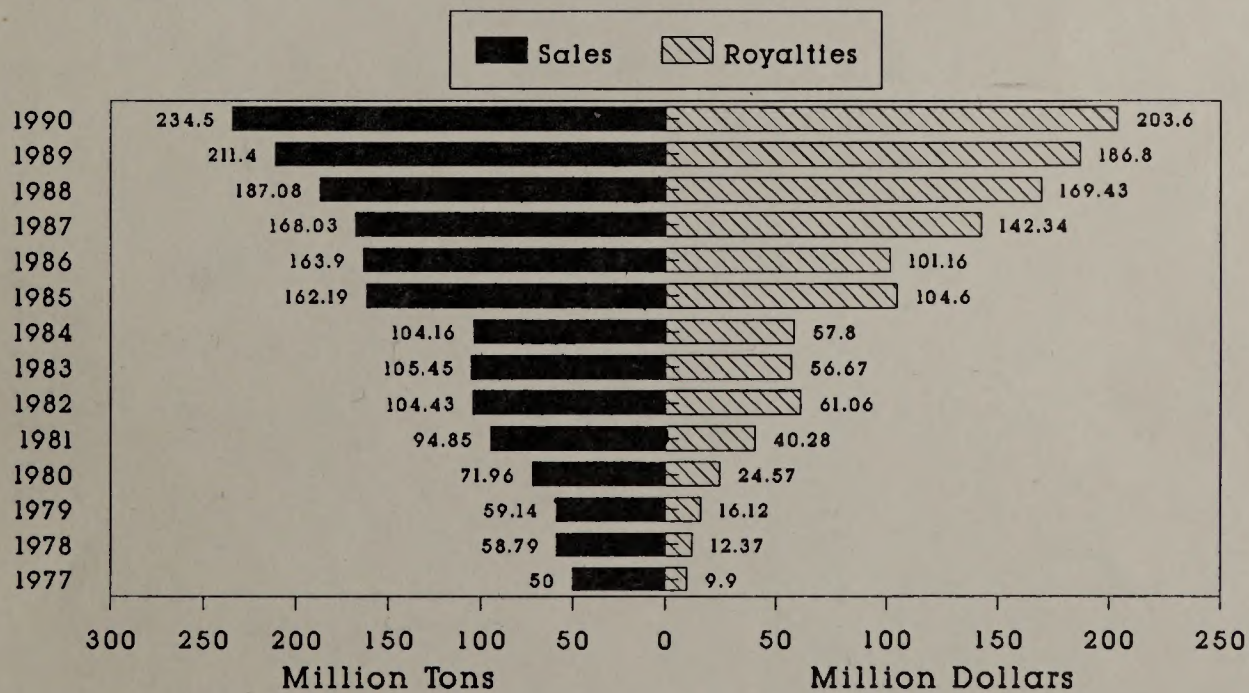


# Fiscal Year 1990 Federal Coal Management Report



Prepared by the  
Bureau of Land Management

## Sales and Royalties Reported from Federal Coal Leases FY 1977 through FY 1990



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WASHINGTON

July 24, 1991

# Federal Coal Management Report

## Fiscal Year 1990

Annual report of the Secretary of the Interior  
under Section 8 of the Federal Coal Leasing  
Amendments Act of 1976 (P.L. 94-377)

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# Federal Coal Management Report

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under Section 8 of the Federal Coal Leasing  
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THE SECRETARY OF THE INTERIOR  
WASHINGTON

July 24, 1991

Honorable J. Danforth Quayle  
President of the Senate  
Washington, D.C. 20510

Dear Mr. President:

In compliance with Section 8 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), Public Law 94-377, which amended Section 8B of the Mineral Leasing Act (MLA) (30 U.S.C. 208-2), I am pleased to transmit to you the Federal Coal Management Report, Fiscal Year 1990.

This report summarizes the major coal management and related activities carried out under the Federal Coal Management Program during Fiscal Year (FY) 1990. A record 234.5 million tons of Federal coal were mined in FY 1990, nearly 24 percent of the total U.S. production. The Federal coal produced had an estimated value of over \$2.5 billion, and generated \$203.6 million in royalties. One-half of those royalty receipts were returned to the States in which the production occurred. Production increased by 10.9 percent and royalties by 9.0 percent over FY 1989.

The Federal production for FY 1977, the first year reported to Congress under FCLAA, totalled only 50 million tons, and was valued at \$433 million. Royalties for FY 1977 amounted to \$9.9 million. The significant increase in royalty since FY 1977 is due in part to the increases in production, but is primarily a result of the increased number of leases paying a percentage of production value as royalty, as is mandated by the MLA as amended by FCLAA. These royalty rates are considerably higher than the cents-per-ton royalty rates previously in effect.

Statistically, the report features details of Federal coal production, royalties, total lease acreage and recoverable reserves, and presentations of important leasing and lease operations actions that transpired during FY 1990.

I trust you will find the report informative.

Sincerely,

*Samuel Ragan Jr.*

Enclosure

cc: Senate Committee on Energy and Natural Resources







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## PREFACE

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The annual Federal Coal Management Report, mandated by the Federal Coal Leasing Amendments Act of 1976 (FCLAA), focuses on the implementation of the Federal Coal Management Program during Fiscal Year (FY) 1990. This will be the fourteenth report to be transmitted to Congress.

This report is divided into four major parts: (1) Summary of Management, Supervision and Enforcement Activities summarizing the status of Federal coal lands and Federal agencies involved; (2) Leasing and Production from Federal Coal Lands briefly describing the major accomplishments in the Federal Coal Management Program in FY 1990;

(3) Recommendations/Initiatives in the form of improvements, environmental safeguards, and the level of leasing and production from Federal coal lands; and (4) Department of Justice - Competition and Antitrust Analysis.

The Minerals Management Service statistics for FY 1990 represent production and royalties reported based on accounts receivable during the fiscal year. The royalty management statistics do not precisely equate to actual production achieved or royalty accrued on that production during FY 1990 due to adjustments for prior years.







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## **ACKNOWLEDGMENTS**

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This report was prepared in the Bureau of Land Management (BLM) by Tony Ferguson, Division of Solid Mineral Operations, with assistance from the staffs of the Division of Solid Mineral Operations and Division of Solid Mineral Leasing.

Sections pertaining to other Departmental Agencies were provided and reviewed by the United States Geological Survey (GS), Minerals Management Service (MMS), Office Surface Mining Reclamation and Enforcement (OSM), Fish and Wildlife Service (FWS), the Forest Service (FS) and Department of Justice (DOJ).

In an effort to be more concise as well as more responsive to the requirements of the Act, the FY 1990 Federal Coal Management Report has been reorganized from previous years.

This report was reviewed by the Department of Interior's (DOI) Office of the Solicitor.







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## **CHAPTER 1**

# **SUMMARY OF MANAGEMENT, SUPERVISION, AND ENFORCEMENT ACTIVITY**

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### **INTRODUCTION**

On August 4, 1976, Congress amended the coal provisions of the Mineral Leasing Act (MLA) with the enactment of the Federal Coal Leasing Amendments Act of 1976 (FCLAA). Section 8B of MLA (30 U.S.C. 208-2), added by Section 8 of FCLAA, requires an annual report on leasing of and production from coal lands; a summary of management, supervision and enforcement activities; and recommendations to the Congress for improvements in management, environmental safeguards and amount of production from leasing and mining operations on Federal coal lands. The report must also contain a section prepared by the Attorney General on competition in the coal and energy industries including an analysis of whether the antitrust provisions of MLA and the antitrust laws are effective in preserving or promoting competition in the coal or energy industry. The annual Federal Coal Management Report fulfills the requirements of Section 8B. The DOJ reporting requirements are also met with this report (See Chapter 4).

In response to the amended provisions of the MLA, the Secretary of the Interior established a new Federal Coal Management Program in 1979, comprised of two primary components:

(1) leasing and (2) management of pre-lease and post-lease operations. Although the primary responsibility for the program is in the DOI, specifically in BLM, MMS, OSM, GS, and FWS, two additional agencies have important roles: the FS (land management planning responsibilities for lands under its jurisdiction) and DOJ (competition in the coal and energy industries).

### **BUREAU OF LAND MANAGEMENT**

The BLM serves as the principal Federal agency for the management of Federal coal reserves under its two programs - coal leasing and coal operations. In its roles as coal lessor and manager, BLM coordinates with other Federal agencies and State and local governments, whose responsibilities may be affected by coal-related activities, and with representatives of industry and environmental groups, whose interests are affected by coal leasing and development.

Management of pre-lease and post-lease operations (which include all activities that occur after issuance of a lease, license, or permit) includes responsibility



for oversight of exploration and mining.

Chief components of leasing include land-use planning, competitive regional lease sales, leasing by application, disposition of pending preference right lease applications, lease issuance, and lease exchanges. The first major step in the leasing portion of the Federal Coal Management Program is land-use planning by the surface management agency. Decisions resulting from the land-use planning process identify resource uses, including lands acceptable for further consideration for coal leasing. These areas are identified after reviewing all lands in a planning process.

Regional coal activity planning (as defined in 43 CFR 3420) takes place on lands within a Federal coal production region which have been included in one or more completed land-use plans. As of the end of FY 1987, there were five Federal coal production regions: Fort Union, Green River-Hams Fork, Powder River Basin, San Juan River Basin, and Uinta-Southwestern Utah. The Fort Union, Green River-Hams Fork, and Uinta-Southwestern Utah Regions were decertified during FY 1988. The San Juan River Region was decertified in early FY 1989, and the Powder River Region was decertified in early FY 1990. The decertification of the Southern Appalachian Subregion and the Fort Union, Green River-Hams Fork, Uinta-Southwestern Utah, and San Juan River Regions reflects the limited industry interest in leasing new mine tracts and the current condition of the coal market. When interest in Federal coal leasing resumes, the decertified Federal coal production regions may be redesignated

through notification in the Federal Register.

The BLM leases coal through competitive sales using a fixed royalty-variable cash bonus bidding system. The BLM prepares the paperwork necessary to offer the tracts for lease sale, holds the lease sale using sealed bidding procedures, and evaluates the high bids received to determine whether they constitute fair market value for the lease tracts. Many of the 1986 coal leasing program modifications involved the fair market value determination. Changes now in place have revised the economic model by which BLM estimates tract values, the basis upon which minimum bids for coal lease sales may be set, and the bid screening procedures by which a BLM sale panel evaluates the bids for acceptance.

The coal leasing regulations at 43 CFR 3425 provide for an application process through which Federal coal lease sales may be held apart from the regional coal leasing process. There are two types of applications, those for Federal coal located outside designated Federal coal production regions and those for emergency situations within designated Federal coal production regions. Emergency sales are held when the coal is needed within 3 years to maintain production at existing mines, to meet contractual obligations, or to prevent the bypass of Federal coal. No emergency restrictions are placed on lease applications outside Federal coal production regions; lease applications may be submitted for tracts that would support new mining operations as well as for tracts that would support continuation of existing operations.



The major leasing emphasis during the last several years has been on the lease-by-application process. This is a reflection of market conditions and the limited interest of potential coal lessees in new mine tracts.

Primary components of post-lease operations include: inspection and enforcement and production verification, and royalty oversight. Other components include ensuring orderly and efficient exploration, development, mining, preparation, and handling of coal for conservation of coal or other resources; reviewing applications for suspensions, royalty reductions, logical mining units, etc.; ensuring maximum economic recovery of coal; and ensuring that operations meet requirements for diligent development and continued operation, other provisions of MLA, regulations and lease terms, such as approval of exploration, mining, and reclamation plans and that such operations are in compliance with approved plans.

FY 1990 marked the finalization of several proposals initiated in FY 1988. This is particularly true in the area of royalty rates. After reviewing the public comments received from a July 29, 1988, proposed rulemaking, a final rulemaking was published January 26, 1990, (55 FR 26533), which established a fixed royalty rate of 8 percent for Federal underground coal. This rulemaking eliminates the need for the BLM to conduct an "if conditions warrant" test prior to establishment of the underground royalty rates for each lease.

In addition, the BLM completed another action initiated in 1988, the addition of a

fifth category to the royalty reduction guidelines. This State or areawide category allows for evaluation of a royalty rate reduction application based on the differential between Federal and non-Federal royalty rates under conditions where Federal coal is being bypassed or left undeveloped due to a higher Federal royalty rate in those areas where Federal coal does not dominate the market.

Under the new category, a State or area can be nominated for consideration for qualification by petition from the State Governor, industry representatives, or groups of Federal lessees. A Notice of Final Action, promulgating the fifth category, was published in the Federal Register on February 27, 1990, and became effective on March 29, 1990. After an area has qualified, individual applications for royalty rate reductions can be processed.

The BLM continued drafting revisions to the Federal Coal Management Rules (43 CFR Group 3400) during FY 1990. At the present, the revised 3400 regulations are being reviewed by the Office of Management and Budget.

During FY 1990, BLM continued the implementation of a nationwide quality control program for the Solid Leasable Minerals System (SLMS) data base and development of an enhanced system.

In FY 1990, the Solids Minerals Assistance Team (SMAT) program continued to implement the recommendations in the Secretarial Report to the Congress on the Adequacy of Royalty Management for Solid Minerals prepared under section 303 of the



Federal Oil and Gas Royalty Management Act (FOGRMA). The SMAT's monitor implementation of the national policy and guidelines to promote uniformity and consistency nationwide. SMATs are composed of Washington Office Operations staff, technical personnel from the State being visited, and technical staff from at least one other State. Oklahoma was the only coal producing State visited by a SMAT in FY 1990. The SMAT's participated in a mine inspection and reviewed the mine-specific Inspection & Enforcement/Production Verification (I&E/PV) plans, inspection reports, SLMS data, and production verification procedures. The primary focus of the SMAT's is on the need for quarterly production verification. Another important focus during FY 1990 was the development of nationwide policy to ensure independent production verification.

During FY 1990, the BLM's I&E program requirements for quarterly inspections on all producing leases on both Federal and Indian lands were included in all guidance to field offices. Non-producing leases require, at a minimum, annual inspections. Full independent production verifications are also required, at a minimum, pursuant to each inspection of producing Federal and Indian leases.

During FY 1990, 6 royalty rate reduction applications were received. One application was rejected and 5 are still being processed. Three States initiated studies for areawide qualifications designation.

The DOI conducts two types of exchanges that involve the transfer of

coal mineral rights (legislative lease exchanges and Section 206 FLPMA exchanges). Enactment of the FCLAA removed the DOI's general authority to issue coal leases noncompetitively, a revocation that has ruled out all coal lease exchanges except for those specifically legislated by Congress. Where specifically allowed or directed by law, DOI may award a new coal lease to a Federal or Indian coal lease holder in exchange for relinquishment by the lessee of an existing lease or leases. In the lease exchange statutes enacted to date, lease exchanges have been made on an equal-value basis. The BLM may also consider fee coal exchanges under Section 206 of FLPMA on a case-by-case basis in response to proposals from private fee coal owners. There are some instances where BLM field officials may also identify coal land areas during land-use planning as having fee coal exchange potential. The environmental impacts of proposed exchanges are studied before any exchange is completed. All Section 206 exchanges must be of equal value and in the public interest.

Public Law 95-554 allowed the Secretary to exchange nine coal leases associated with Interstate Highway 90 (I-90) in Wyoming. The nine leases were held by six lessees. One exchange was completed in 1982, another in 1983, and another in 1986. Also in FY 1986, two exchange proposals were rejected as not being in the public interest. Both rejections were appealed to the Interior Board of Land Appeals (IBLA), and one of the appeals was subsequently withdrawn and the lease relinquished. In March 1987, the IBLA ruled on the



remaining appeal by remanding the exchange decision to BLM to make a formal, written determination on whether or not the exchange was in the public interest. The public interest determination was still under consideration at the end of FY 1990. The sixth lessee relinquished the affected coal lease and is no longer eligible for an exchange.

Additionally, the BLM was preparing an Environmental Impact Statement (EIS) on a proposal by Meridian Minerals Company to exchange 9,873 acres of its high-value recreation and wildlife land in Montana for 3,674 acres of Federal coal in the Bull Mountains in Musselshell and Yellowstone Counties, Montana. The DOI released a draft EIS for public review and comment in October 1989. The final EIS was issued in November 1990 and a decision regarding this proposed exchange is pending.

## **BLM LITIGATION**

The following section presents an update of litigation involving the BLM up to the date of submission of the report for printing.

### Powder River Sale

Two lawsuits challenged the April 1982 regional coal lease sale for the Powder River Region. The cases were originally filed in the U.S. District Court for the District of Columbia, where a motion for a restraining order against the lease sale was denied. On the government's motion, the cases were consolidated and transferred to the Federal District Court in Montana. The court heard arguments in December 1982 on cross motions for

summary judgment and motions to dismiss specific allegations. The Montana court then separated the cases for decision.

In Northern Cheyenne Tribe v. Hodel, Civil No. 82-116 (D. Mont.), the Tribe asserted that the EIS prepared for the sale was deficient because of its alleged failure to discuss adequately the effects of the proposed regional leasing on the plaintiff's reservation. On May 28, 1985, the court ruled in favor of the Tribe and declared void the leases issued in Montana as a result of the sale. The DOI petitioned the court for reconsideration of its order to cancel the leases. The lessees petitioned the court to intervene and for reconsideration. The court granted the motions for intervention, stayed its cancellation order, and enjoined all lease operations. On October 6, 1986, the court granted the motions and (1) allowed one lessee to mine its three mine maintenance leases, provided mining did not cause "significant socio-economic impacts" on the Tribe, and (2) directed the Secretary to suspend the remaining leases pending supplementation of the EIS and appropriate review of lease issuance, terms and conditions. The Tribe then appealed the October 1986 order to the U.S. Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals for the Ninth Circuit issued its amended decision on July 11, 1988, in which it reversed and remanded the October 6, 1986, order 842 F.2d 224. The Ninth Circuit first found that the District Court possessed its full range of traditional equity power to fashion appropriate injunctive relief. The



Ninth Circuit then found that the District Court did not abuse its discretion when it amended its order to suspend the leases rather than void them. The Ninth Circuit then found two other defects with the injunction. First, it held that the Secretary failed to comply with his regulations because the Regional Coal Team did not have sufficient input from the Tribe. Therefore, the Ninth Circuit ruled that if the District Court decides to re-issue an injunction suspending the leases, it must order the Secretary to redo the activity planning in which tracts are identified, ranked, analyzed and selected. Second, the Ninth Circuit ruled the injunction must prohibit the Secretary from considering the existence of, and investment in, the leases when he prepared the supplemental EIS.

Finally, the Ninth Circuit ruled that the District Court had an inadequate record on which to determine the costs to the Tribe, the lessee, and the public, which may result from mining or not mining while the supplemental EIS is being prepared. The Ninth Circuit ordered the District Court to hold an evidentiary hearing on this issue. The evidentiary hearing has been scheduled for March 1991.

Following the remand, no action occurred other than a motion for attorney's fees by the Tribe. In June 1989, BLM issued its draft supplemental EIS for public comment. The final supplemental EIS was released in July 1990. On October 25, 1989, the District Court awarded the Tribe \$338,309 for attorneys' fees, costs and expenses.

## Coal Management Rules

In Natural Resources Defense Council v. Burford, Civil No. 82-2763 (D.D.C), eight groups have joined to challenge the July 1982 revisions to the July 1979 coal program rules. The suit seeks to: (1) enjoin implementation of the revised coal regulations; (2) declare the revised regulations improperly issued; and (3) enjoin any future coal lease sales until the reclaimability standard of Section 522(a)(2) of SMCRA is applied to the lease tracts prior to a sale. In support of their lawsuit, the plaintiffs allege that DOI, in amending the rules, violated the National Environmental Policy Act (NEPA) and various provisions of FCLAA, FLPMA, and SMCRA. The parties filed and fully briefed cross motions for summary judgment.

On remand the court ordered a hearing for July 24, 1990, requiring counsel to answer five questions and present appropriate oral argument on those questions. The questions inquired about the processes of amending and formulating RMP's, the advantages or disadvantages of applying unsuitability criteria at the land use planning stage, the Fifth Amendment implications of applying diligent development requirements to pre-FCLAA leases, the processes by which potential qualified surface owners are notified of actions which may compromise their rights, and the status of remaining claims. On July 17, 1990, the court cancelled the July 24 hearing and ordered the parties to submit written responses to the questions. The responses were filed in a timely manner and the parties await the court's ruling on the responses previously filed.



In NWF/NRDC v. Hodel, Civil No. 88-0301 (D.D.C. February 15, 1988), plaintiffs challenged the adoption of regulations which clarified and modified the treatment of coal in BLM's land use planning process, including the unsuitability criteria which are used to exclude land from consideration for coal leasing. The regulations, which became effective on January 7, 1988, implemented one of the Secretary's February 1986 decisions on the Federal coal management program.

The lawsuit as amended seeks an order requiring DOI to adopt additional unsuitability criteria for reclaimability and wetlands to be applied during land use planning and further requiring DOI to apply all unsuitability criteria during land use planning to lands that had been leased before the first SMCRA regulations were adopted in 1979. The lawsuit further seeks a declaratory judgment that DOI violated NEPA by failing to prepare an EIS or Environmental Assessment (EA) in connection with the proposed or final rules and an order that either an EIS or EA be prepared. Plaintiffs allege that SMCRA requires utilization of an unsuitability criterion for reclaimability in land use planning and that Exec. Order 11990 requires an unsuitability criterion for wetlands to be used in land use planning.

The DOI's position is that plaintiffs are not really challenging the 1982 rulemaking, but the decisions made in 1979 on reclaimability and wetlands criteria and in 1982 for leased lands. Accordingly, the DOI seeks dismissal of the suit as untimely and a challenge

outside the scope of rulemaking. The DOI also argues that nothing in SMCRA or the executive order requires that lands be screened for reclaimability or wetlands at the land use planning stage as opposed to the mining plan review or multiple use planning stages of Federal coal management.

The DOI also contends that Federal lands review is not subject to NEPA, but if it is, that NEPA was satisfied by the detailed programmatic EIS for the Federal Coal Management Program issued in 1985 prior to the Secretary's decision as to what rules changes to propose. Finally the DOI challenges plaintiffs' "informational standing" and the existence of a private right of action to enforce Exec. Order 11990. Plaintiff has filed a notice for summary judgment and the DOI has filed a cross-motion for summary judgment.

#### First Post - FCLAA Lease Readjustment

This section describes a group of cases relating to the first lease readjustment after enactment of FCLAA for coal leases that were issued prior to FCLAA under Section 7 of the MLA. Section 7 made the leases subject to the right of the Secretary to readjust the terms and conditions of the leases, including royalty provisions, at the end of every 20 years "unless otherwise provided by law." 30 U.S.C. § 207 (1970). In two cases decided simultaneously by the U.S. Court of Appeals for the Tenth Circuit, FMC Wyoming Corp. v. Hodel, 816 F.2d 496 (10th Cir. 1987), cert. denied, 108 S.Ct. 772 (1988) and Coastal States Energy Corp. v. Hodel, 816 F.2d 502 (10th Cir. 1987), the U.S. Court of Appeals for the



Tenth Circuit affirmed all but one of DOI's policies on coal lease readjustments. The two principal positions upheld by the Tenth Circuit in FMC and Coastal were: (1) notices of intent to readjust the terms of a coal lease issued prior to passage of FCLAA which are sent by BLM to the lessee on or before the 20-year anniversary date of the lease "preserves the DOI's right to readjust the terms within a reasonable time thereafter" even if the proposed terms are not sent or made final until after the anniversary date; and (2) the minimum 12.5 percent production royalty rate added to Section 7 of FCLAA for surface-mined coal, and other mandatory lease terms added by FCLAA such as diligence, must be included in pre-FCLAA coal leases on their first post-FCLAA readjustment. In Coastal, the court also affirmed as reasonable the 8 percent production royalty rate for underground coal under the regulations at 43 C.F.R. Section 3473.3-2(a)(3). However, the court then held that the provision of this regulation which allows a lesser production royalty rate for underground coal of not less than 5 percent "if conditions warrant" must be considered by DOI at the time of readjustment. Following the Coastal States decision, the DOI published proposed rules in the Federal Register regarding the underground royalty rate (as noted above on page 3) on July 29, 1988; and on January 26, 1990, published final regulations establishing a uniform royalty rate for coal mined by underground methods of 8 percent of the value of the mined coal (55 FR 2653, January 26, 1990).

Two additional cases are pending within the Tenth Circuit. General Electric

Holdings Inc. et al. v. Hodel, Civil No. 87-979 (D. Colo.), was decided in the DOI's favor on July 20, 1990. That case has been appealed to the Tenth Circuit. Bear Coal Co., Inc. v. Hodel, Civil No. 87-1493 (D. Colo.), has not yet been decided.

In three consolidated cases in the United States District Court for the District of Columbia, the court, relying on the FMC and Coastal States decisions, summarily affirmed the DOI's readjustments. Peabody Coal Co., et al. v. Hodel, Civil Nos. 87-1359, 87-2325, and 87-2669 (D.D.C. October 11, 1988). All three cases were appealed to the U.S. Court of Appeals for the D.C. Circuit where the Circuit Court upheld the District Court decision. Western Fuels Utah, Inc., et al. v. Lujan, 895 F.2d 780 (D.D.Cir. 1990). Separate petitions for certiorari by plaintiffs were denied by the Supreme Court. One other case filed in the United States District Court for the District of Columbia had been stayed pending the outcome of the appeal in Peabody.

In Western Energy Co. v. Hodel, Civil No. 88-12 (D. Mont.), the United States District Court for the District of Montana affirmed the DOI's readjustment on February 20, 1990. Plaintiff appealed this decision to the U.S. Court of Appeals for the Ninth Circuit.

On May 8, 1991, the Ninth Circuit affirmed the District Court decision, relying principally on the rationale of the United States Court of Appeals for the District of Columbia Circuit in Western Fuels - Utah.

As a result of these decisions, thirteen



other coal readjustment cases with the same issues have been voluntarily dismissed.

### 10-year Readjustment

This is a group of cases challenging DOI's authority to readjust a pre-FCLAA lease 10 years after failure to timely readjust the lease on the first post-lease anniversary date. The U.S. Court of Appeals for the Tenth Circuit has previously held that the DOI's failure to notify a lessee prior to the date for readjustment of the DOI's intent to readjust constituted a waiver of the right to readjust. Rosebud Coal Sales Co., Inc. v. Andrus, 667 F.2d 949 (10th Cir. 1982). In Trapper Mining, Inc. v. Hodel, Civil No. 88-1812 (D. Colo.), on November 9, 1989, after hearing oral argument regarding cross-motions for summary judgment, the U.S. District Court for the District of Colorado ruled from the bench affirming the DOI's position. Plaintiff appealed the Trapper decision to the Tenth Circuit. In Wyodak Resources Development Co. v. Lujan, Civil No. C89-0575 (D. Wyo.), the United States District Court for the District of Wyoming reversed the DOI's readjustment on December 26, 1989. The DOI appealed the Wyodak decision to the Tenth Circuit.

On January 15, 1991, the Tenth Circuit, consolidating the Trapper and Wyodak appeals, affirmed the DOI's position, holding that Congress clearly intended the 10-year readjustment interval it established in Section 6 of FCLAA to apply to pre-FCLAA leases upon their first post-FCLAA anniversary date, even if the DOI had waived the first post-

FCLAA readjustment. Trapper Mining, Inc. v. Lujan, No. 89-1372; Wyodak Resources Development Corp. v. Lujan, No. 90-8025. The Appeals Court went on to state that estoppel would not apply to initial statements or representations made by DOI officials to lessees that the interval would be 20 years. As a result of this decision, another 10-year interval case within the Tenth Circuit was dismissed with prejudice by the United States District Court for the District of Utah. Kanawha and Hocking Coal and Coke Co., et al v. Lujan, Civil No. 89-C-172J (D. Utah). Plaintiffs have appealed this decision.

### Exchanges

Plaintiff Whitney Benefits, Inc., owns two tracts of coal in the Tongue River Valley of Wyoming which it has leased to plaintiff Peter Kiewit and Sons, Inc., for development. The State of Wyoming preliminarily determined that a portion of the area met the definitions of an Alluvial Valley Floor (AVF) under Section 510(b)(5) of SMCRA. 30 U.S.C. § 1260 (b)(5) prohibits surface mining in an AVF, if it would "interrupt, discontinue, or preclude" farming but entitles the owner of the coal to obtain Federal coal in exchange. Plaintiffs filed suit in the U.S. District Court for the District of Wyoming to compel the exchange. Whitney Benefits, Inc., et al. v. Hodel, Civil No. 84-0193 (D. Wyo.) (Whitney Benefits I). The District Court initially found for plaintiffs that BLM had delayed offering an exchange unduly and ordered that the exchange be completed by August 31, 1985. BLM then determined that the coal had a negative value of 79 million dollars and declined to proffer Federal coal in



exchange. On December 3, 1985, the court ruled that the exchange must be completed. BLM then tendered a tract of Federal coal to the plaintiffs in compliance with the court's order. Plaintiffs objected to the tender as insufficient and declined to accept or reject the offer. The case has been stayed pending a final determination of a related case, Whitney Benefits, Inc. v. United States, 18 Cl. Ct. 394 (1989) (Whitney Benefits II). Whitney Benefits II was affirmed by the Federal Circuit on February 26, 1991, No. 90-5058. In Whitney Benefits II, the Claims Court and Federal Circuit Court held that: (1) plaintiff's coal was taken when Congress enacted SMCRA on August 3, 1977; (2) the value of the coal was properly determined by use of a hypothetical mine plan prepared by a consultant for plaintiff for trial purposed in 1985 rather than an actual mine plan filed by plaintiffs in 1976. A petition for rehearing was denied and a suggestion for rehearing en banc is pending (See OSM section below for further discussion of this case). Meanwhile, the company interested in obtaining a competitive coal lease for the coal in the tendered tract has sued DOI to compel a lease sale. Ash Creek Mining Co. v. Lujan, Civil No. 89-0162 (D. Wyo.) (Ash Creek I). On December 18, 1989, the United States District Court for the District of Wyoming found that plaintiffs had no standing and dismissed the case. Plaintiffs have appealed the decision to the Tenth Circuit.

In State of Wyoming, ex rel., Sullivan v. Lujan, et al., C90-170B (D. Wyo.) (The JY Ranch Exchange) Wyoming is asking the court to void the Secretary's May 11, 1990 exchange of Federal coal for a

conservation easement. The coal, in Sheridan County, Wyoming, was exchanged for a conservation easement on the JY Ranch in Teton County, Wyoming. The State also asks the court to void Sloan-Kettering Cancer Research Institute's sale of the coal to Reserve Coal Properties Company. Wyoming filed a motion to consolidate the case with Ash Creek II (see below). After briefing and oral argument, the judge dismissed the case on March 15, 1991. The State of Wyoming, however, has appealed the decision.

In Ash Creek Mining Co. v. Lujan, et al., C90-218 (D. Wyo., filed Aug. 21, 1990) (Ash Creek II), the plaintiff seeks the same relief as State of Wyoming v. Lujan (above), i.e., to void the JY Ranch exchange and sale of coal by Sloan-Kettering. It is very similar to the Ash Creek I case decided in the Government's favor on December 18, 1989. Plaintiff in Ash Creek II also requested the court to consolidate this case with Wyoming's lawsuit (above). The DOI filed a brief in opposition to plaintiff's motion to consolidate and filed a separate motion to dismiss for lack of standing on December 4, 1990. The District Court granted both motions on March 8, 1991.

## **MINERALS MANAGEMENT SERVICE**

The MMS responsibilities in the Federal Coal Management Program focus upon the collection of royalties, rents, and bonuses from Federal coal lessees. The MMS is responsible for collecting, accounting for, disbursing, and verifying the royalty payments for Federal coal



leases. During FY 1990, Federal royalties were collected on coal production valued at slightly over 2.5 billion dollars. Tables 1 and 2 display producing leases, sales quantities, and royalty payments by both State and coal producing region. The Federal royalties amounted to an average of 8 percent of the production value of Federal coal in FY 1990.

On public domain lands, with the exception of Alaska, 50 percent of the royalties are disbursed to the State treasuries, 40 percent are placed in the Federal Reclamation Fund that was established by the Reclamation Act of 1902, and 10 percent remains in the U.S. Treasury's miscellaneous receipts. Ninety percent of the royalties from Federal coal leases in Alaska, south of the 68th parallel, are disbursed to the Alaska State Treasury.

## **MMS ROYALTY LITIGATION**

The following section presents an update of litigation involving MMS during FY 1990.

### Collection of Accrued Royalty

In Arch Minerals Corp. v. Hodel, Civil No. 88-0113 (D. Wyo.), plaintiff challenged DOI's authority to collect royalty which accrued while plaintiff challenged the readjustment of its coal leases. Plaintiff first argued that DOI is barred from seeking unpaid royalties by DOI's failure to file a compulsory counterclaim in Arch's earlier lawsuits challenging the readjustment of the royalty rates on its coal leases. Second, plaintiff argued that DOI cannot collect unpaid royalties and interest because DOI has failed to issue

regulations under the Debt Collection Act. Plaintiff also argued that the Secretary has no authority to collect unpaid rents or royalties by administrative action but must go to court to prove such claims. Finally, plaintiff raised several issues concerning the value of its coal for royalty purposes which are also the subject of an administrative appeal to the Director, MMS.

On February 24, 1989, the court ruled in favor of DOI on all issues except the coal valuation issues, which the court dismissed without prejudice pending the outcome of the administrative proceeding. As to the compulsory counterclaim, the court found it to be premature in a case challenging the authority to readjust the terms and conditions. The court then rejected plaintiff's argument that back royalty and interest are subject to the Debt Collection Act, holding that these monies are collected under the authority of MLA. Regarding the authority of the Secretary to collect unpaid rents and royalties administratively, the court, noting that the MLA authorizes the Secretary to promulgate "all necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of ... [the Act]", 30 U.S.C. Section 189, held that collecting of rents and royalties is one of the purposes of the Act and within the broad grant of authority to the Secretary. On appeal, the United States Court of Appeals for the Tenth Circuit affirmed the District Court decision in all respects, except that it vacated the District Court's holding that the Secretary could impose "late charges" on unpaid rents and royalties because that determination was premature until the



TABLE 1  
PRODUCING LEASES, SALES QUANTITY, SALES VALUE AND ROYALTY PAYMENTS  
BY STATE: FY 1990

State	Producing Leases	Acreage	Sales Quantity (Thousand Tons)	Sales Value (Thousand \$)	Royalty Value (Thousand \$)
Alabama	1	120	641	25,335	1,764
Colorado	29	37,744	12,464	282,953	16,634
Kentucky	1	196	122	3,121	265
Montana	13	32,281	26,929	314,131	27,608
New Mexico	6	13,874	6,779	179,177	21,555
North Dakota	10	11,976	5,304	45,831	4,177
Oklahoma	3	3,408	168	4,422	241
Utah	30	44,240	16,879	428,014	28,200
Washington	1	241	783	20,264	212
Wyoming	35	112,216	164,434	1,228,641	102,974
Total	129	256,296	234,503	2,531,889	203,630

Note: The statistics represent sales and royalties reported during FY 1990 and adjustments made during FY 1990 for prior periods. The FY 1990 royalty management statistics may not represent actual production achieved in FY 1990 or the royalty on that production due to adjustments for previous years. Estimated in part.

Source: U.S. Department of the Interior, Minerals Management Service, Royalty Management Program



**TABLE 2**  
**PRODUCING LEASES, SALES QUANTITY, SALES VALUE AND ROYALTY PAYMENTS**  
**BY REGION: FY 1990**

Region	Producing Leases	Acreage	Sales Quantity (Thousand Tons)	Sales Value (Thousand \$)	Royalty Value (Thousand \$)
Southern Appalachian	1	120	641	25,335	1,764
Fort Union	11	12,776	5,366	46,624	4,264
Green River-Hams Fork	30	59,763	18,529	458,530	35,496
Powder River	33	98,754	182,768	1,302,995	109,079
San Juan River	8	14,214	6,947	183,216	21,855
Uinta-SW Utah	41	66,824	19,179	487,382	30,454
Other	5	3,845	1,073	27,807	718
<b>TOTAL</b>	<b>129</b>	<b>256,296</b>	<b>234,503</b>	<b>2,531,889</b>	<b>203,630</b>

Note: The statistics represent sales and royalties reported during FY 1990 and adjustments made during FY 1990 for prior periods. The FY 1990 royalty management statistics may not represent actual production achieved in FY 1990 or the royalty accrued on that production due to adjustments for previous years. Estimated in part.

Source: U.S. Department of the Interior, Minerals Management Service, Royalty Management Program.



valuation issues were resolved. Arch Minerals Corp. v. Lujan, 911 F.2d 408 (10th Cir, 1990).

### Coal Product Value Regulations

In National Coal Association (NCA) and American Mining Congress (AMC) v. Lujan, Civ. No. 90-1927 (D. Colo. filed Oct. 30, 1990), NCA and AMC brought this action on behalf of their member companies challenging an August 30, 1990, MMS rulemaking action. The challenged rule reverses a 1989 regulation that allowed coal lessees to deduct amounts representing severance taxes, Abandoned Mine Land fees, and Black Lung Excise taxes before determining the value of coal production for royalty purposes. The plaintiffs base their action on the grounds that the challenged rule is in excess of statutory authority by defining value to include matters that are alleged not to be part of value, and that the challenged rule is arbitrary, capricious, and an abuse of discretion in that the reasons stated for changing the rule are inadequate. The Government filed its answer on January 10, 1991.

## **UNITED STATES GEOLOGICAL SURVEY**

The major coal-related activities of the GS during FY 1990 involved the Coal Resources Investigations Program, National Coal Resources Data System (NCRDS), the Evolution of Sedimentary Basins Program, and the Coal Hydrology Program.

The Coal Resources Investigations Program consists of mapping,

establishing local and regional coal-bed stratigraphic and correlation networks, and coal-quality and coal-resource characterization assessments done on regional as well as detailed, local levels. Data derived from these assessments and related studies are entered into the NCRDS, a computer-based resource data system. These data are available to support the Federal Coal Management Program. In FY 1990, new data entry of approximately 15,000 point location descriptions with over 160,000 detailed stratigraphic records and 500 chemical analysis records was accomplished. The largest contribution came from cooperative programs with 22 State geologic agencies. Currently, the NCRDS contains approximately 1.65 million stratigraphic units and at least some chemical data on more than 100,000 coal samples. The USCHEM data base of NCRDS currently stores over 120 attributes of those coal samples analyzed through USGS's coal geochemistry program. Currently the data base houses over 6,000 publicly available samples including a developmental data base of 13,000 samples.

A major new direction in assessing coal resources was begun in FY 1987. A pilot study to develop methodology to assess the availability of coal resources for development was carried out in eastern Kentucky in cooperation with the Kentucky Geological Survey. The pilot study was successful and the GS extended the methodology in cooperation with Kentucky, Virginia, and West Virginia. As of the end of FY 1990, eleven additional 7 1/2 minute quadrangle areas in these three States



have been studied. Results to date show that only about 53 percent of the original coal resources in the study areas is currently available for development. This work will be continued in FY 1991 in five new study areas, one each in Kentucky, Ohio, Virginia, and two in West Virginia.

The Evolution of Sedimentary Basins Program is designed to conduct basic research for an integrated approach to the prediction and assessment of energy resources in all major sedimentary basins including those containing Federal coal deposits. In addition to the basins previously studied, the Illinois, Great, and Paradox Basins were added in FY 1990. This program is providing important regional information which will improve energy-resources characterization on Federal lands.

The Coal Hydrology Program consists of hydrologic data collection, areal studies, and research activities associated with the availability of water to support increased coal development and the impacts of such development on the hydrology. In FY 1990, such activities were underway in 28 states. This work provides water-resources information essential to the preparation and review of applications for mining permits and reclamation plans by the coal industry.

In FY 1990, regional geologic studies and coal resource characterizations were underway in all major coal basins west of the 100th Meridian and in the Appalachian Province. In addition, 22 State geologic agencies were cooperatively supported by the GS for the appraisal of the coal deposits in their States.

In support of the Federal Coal Management Program in FY 1990, work was conducted in coal-resource and coal-quality assessments in cooperation with Alabama, Colorado, Kentucky, Montana, New Mexico, Utah, and Wyoming. Fifty-five regional maps, at a scale of 1:100,000 or larger, of priority areas in the Western Federal coal regions, including information on coal geology, and engineering and hazards studies, have been completed to the stage where they can be used in coal management decisions.

About 130 topical reports and maps on research activities that are supportive of the work of the Federal Coal Management Program have been prepared and published by the GS during FY 1990.

### **OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT**

The primary objective of the OSM is to protect society and the environment from the adverse effects of surface coal mining operations and to do so under conditions consistent with the Nation's need for energy. OSM's principal roles relative to Federal lands are to: (1) define policy and promulgate rules establishing performance standards and program administration processes; (2) review and process permit applications and mining plans, including such activities as are necessary for NEPA compliance, and recommend action on mining plans to the Secretary; (3) in States with approved State regulatory programs under Section 503 of SMCRA, negotiate State-Federal cooperative agreements for State



regulation on Federal lands according to Section 523(c) of SMCRA; (4) in the absence of State-Federal cooperative agreements, carry out the permitting inspection and enforcement, and other functions of the regulatory authority as set forth in SMCRA; (5) provide oversight of State administration of the regulatory requirements under the terms of an approved State-Federal cooperative agreement; and (6) administer a program to designate Federal lands unsuitable for surface coal mining under the petition process specified in Sections 522 (a) and (c) of SMCRA.

There were no petitions filed to designate areas unsuitable for surface coal mining on Federal lands in FY 1990.

As of the end of FY 1990, the Secretary had entered into permanent program cooperative agreements with the States of Alabama, Colorado, Illinois, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Utah, Virginia, West Virginia, and Wyoming to manage surface coal mining on Federal lands in accordance with OSM requirements.

At the beginning of FY 1990, OSM had 12 permit applications pending review for which approval of a mining plan, or approval of a modification to an approved mining plan, is required. During the year, 12 more were received and 5 mining plans or modifications were approved. At the end of FY 1990, 19 mining plan actions were carried over to FY 1991.

#### **OSM LITIGATION SPECIFICALLY ON FEDERAL COAL**

The following section presents an update of litigation involving OSM during FY 1990.

##### Alluvial Valley Floor Determination

Plaintiff Whitney Benefits, Inc., owns two tracts of coal in the Tongue River Valley of Wyoming which it has leased to plaintiff Peter Kiewit and Sons, Inc. The State of Wyoming has determined the area to be an AVF, as defined in Section 510(b)(5) of SMCRA. 30 USC Section 1260(b)(5). In Whitney Benefits, Inc. v. United States, 18 Cl. Ct. 394 (1989), (Whitney Benefits II), plaintiff filed suit seeking just compensation for a "taking" of its property as a result of the mining prohibition. The Government had earlier moved to dismiss based on the exchange provisions in SMCRA and the outstanding exchange offer by the DOI in Whitney Benefits I. (See BLM section above for the procedural status of this related case.) The Claims Court granted the Government's motion, but the U.S. Court of Appeals for the Federal Circuit reversed and held that the exchange entitlement under SMCRA does not foreclose the coal owner from seeking to establish a taking for which it must receive just compensation. (752 F.2d 1554)

On October 18, 1989, the Claims Court issued its decision in favor of the plaintiff in the amount of \$60,296,000 plus interest from the date of enactment of SMCRA, August 3, 1977. (18 Cl. Ct. 394) The court ruled in favor of plaintiff on most issues, including that the prohibition deprives plaintiff of all economic value of the property and that plaintiff had a reasonable, investment-backed



expectation of mining the coal. This latter conclusion was reached despite the need to divert the Tongue River, which would require special permits and purchase of property, in order to mine at least half of the coal. The court also ruled that the taking occurred upon enactment of SMCRA and not upon the administrative determination that the area was in fact an AVF. The Government has appealed this decision. On February 26, 1991, the Federal Circuit affirmed the Claims Court decision. No. 90-5058. A petition for rehearing by the Government was denied by a suggestion for rehearing en banc is pending.

#### Unsuitability Determination

In BHP-Utah International, Inc. v. United States, No. 782-86 (Cl. Ct.), plaintiff sought compensation for a "taking" of its Federal and State coal leases or, in the alternative, an alleged breach of its Federal coal lease contracts for coal leases in the Alton Coal Field of southwestern Utah near Bryce Canyon National Park. The Secretary determined in 1980 that the leases were unsuitable for surface coal mining because of visual and auditory impact on Bryce Canyon in response to an unsuitability petition filed under Section 522 of SMCRA. After completion of extensive briefings, the court encouraged the parties to settle the case, the parties entered into a settlement agreement and the case has been resolved.

### **FISH AND WILDLIFE SERVICE**

The FWS strives to ensure that fish and wildlife resources, including endangered species, receive full and equal

consideration during activities associated with the development of Federal coal resources. The FWS gathers and analyzes data related to fish and wildlife resources and development plans to identify areas of natural resources conflict. The FWS also provides assistance in the development of alternatives that avoid and/or minimize losses to fish and wildlife resources, as well as provide opportunities for enhancement of these resources.

Most of the FWS involvement in the Federal Coal Management Program consists of providing technical assistance to BLM during the planning phase of Federal coal leasing and mining operations and the OSM during reclamation, as well as during the restoration of Abandoned Mine Lands. The FWS conducts operational as well as research and development efforts on fish and wildlife impacted by coal development. Operational activities are implemented by the FWS's Fish and Wildlife Enhancement field offices located in the Regions. Data support is provided by the Office of Migratory Bird Management and the National Wetlands Inventory. Research and development activities are conducted by various divisions of the FWS (e.g., Division of Technical Development). Research and development support is furnished by the National Ecology Research Center in Fort Collins, Colorado, and other elements of the Service research program.

The major role of the FWS in the Federal Coal Program has been providing technical review and recommendations for various aspects of the program. These responsibilities range from



reviewing mine permits and plans and monitoring State programs for fish and wildlife protection to on-site field surveys to solve problems and reduce impacts to fish and wildlife resources by mining operations. Impacts can come from many diverse actions such as electrocution of raptors on transmission lines to mines, habitat destruction by mining operations, and disturbance to nesting raptors and/or other migratory birds.

The Southwest Region (Region 2) reviewed 16 mine permits, conducted 40 Endangered Species Act consultations, provided recommendations for 1 Abandoned Mine Land project, and held 5 coordination meetings on coal activities.

The Midwest Region (Region 3) reviewed 172 permit applications and 59 permit revisions, conducted 97 Endangered Species Act consultations, commented on 14 regulation changes, and provided recommendations for 5 Abandoned Mine Land projects.

The Southeast Region (Region 4) reviewed approximately 500 surface mining permits, conducted 30 informal Section 7 consultations, and provided comments on 4 regulatory changes.

The Mountain-Prairie Region (Region 6) reviewed EISs for 10 mine plans, conducted 29 Endangered Species Act consultations, reviewed 5 leases, provided recommendations for 15 wetland reclamation plans, and reviewed 12 plans for migratory birds of high Federal interest. Due to lack of funds, the emphasis has been on endangered

species and wetlands.

## **DEPARTMENT OF AGRICULTURE FOREST SERVICE**

The FS has land management planning responsibilities for lands under its jurisdiction. In addition, the Secretary of Agriculture must consent to the lease terms before a lease can be issued, and must consent to the approval of mining and reclamation plans which include Federal coal leases on National Forest System (NFS) lands.

The FS effort in FY 1990 included land and resource management planning, responding to requests to review lease-by-applications, modifications, readjustments, exploration plans, mine plans, and abandoned mine land reclamation projects.

1. Land and Resource Management Planning - Forest Plans have been completed for those National Forests expected to contain Federal coal except for the Bridger-Tetons which is currently under appeal and is expected to be resolved during calendar year 1991. The other National Forests (NF) which have a reasonable potential of containing Federal coal have approved land and resource management plans. They are: (1) National Forests in Alabama; (2) Allegheny NF in Pennsylvania; (3) Cherokee NF in Tennessee; (4) Custer NF in Montana; (5) Daniel Boone NF in Kentucky; (6) Manti-LaSal and (7) Fishlake and (8) Dixie NF's in Utah; (9) George Washington and (10) Jefferson NF's in Virginia; (11) Medicine Bow NF in Wyoming; (12) Monongahela NF in West



Virginia; (13) Shawnee NF in Illinois; (14) Wayne NF in Ohio; (15) White River; (16) San Juan; (17) Grand Mesa-Uncompahgre; (18) Gunnison NF's in Colorado. The Forest Plans include a report on the application of the unsuitability criteria (43 CFR 3461).

2. Lease by Application - Lease applications responded to in FY 1990:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Manti-LaSal	Pending	1
Manti-LaSal	Completed	1
Medicine Bow	Pending	3

3. Modifications - Lease modifications responded to in FY 1990:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Manti-LaSal	Pending	1
Medicine Bow	Pending	1

4. Readjustments - Lease readjustments responded to in FY 1990:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Medicine Bow	Completed	2
Manti-LaSal	Completed	9
Manti-LaSal	Pending	2

5. Exploration Licenses - Exploration plans responded to in FY 1990:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Manti-LaSal	Pending	3
Manti-LaSal	Completed	1
Medicine Bow	Completed	1
Medicine Bow	Pending	1

6. MLA Mining Plans - MLA mining plans responded to in FY 1990:

<u>Location</u>	<u>Status</u>	<u>Quantity</u>
Fishlake	Completed	1
Manti-LaSal	Completed	10
Manti-LaSal	Pending	9

7. SMCRA Mining Permit Reviews - SMCRA mining proposals responded to in FY 1990:

<u>Location</u>	<u>Quantity</u>
Manti-LaSal	5
Bridger-Teton	1



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## CHAPTER 2

### LEASING AND PRODUCTION FROM FEDERAL COAL LANDS

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The Federal Government owns about one-third of the Nation's coal resources. Coal resources owned and administered by the Federal Government are located on approximately 76 million acres of land principally in the Western United States. Western Federal lands contain approximately 60 percent of the total western coal reserve base. An additional 20 percent of the coal resources in the West are managed or impacted by the Federal Government by virtue of: (1) the commingling of State and private coal reserves with Federal leases and (2) trust responsibilities for Indian lands. In FY 1990, 234.5 million tons of Federal coal were mined, a significant increase of 10.9 percent from the 211.4 million tons of Federal coal mined in FY 1989. This FY 1990 production accounted for approximately 23.9 percent of the total U.S. production, up 2.1 percent from the 21.8 percent of the total U.S. production in FY 1989. Total U.S. production in FY 1990 was approximately 981 million tons, as compared to 969 million tons in FY 1989.

In FY 1990, total reported royalties on Federal coal leases were 203.6 million dollars, a 9.0 percent increase from the total reported royalties of 186.8 million dollars in FY 1989. This increase in reported royalties is due primarily to the increase in production. Figures 1 and 2 graphically depict the sales quantities

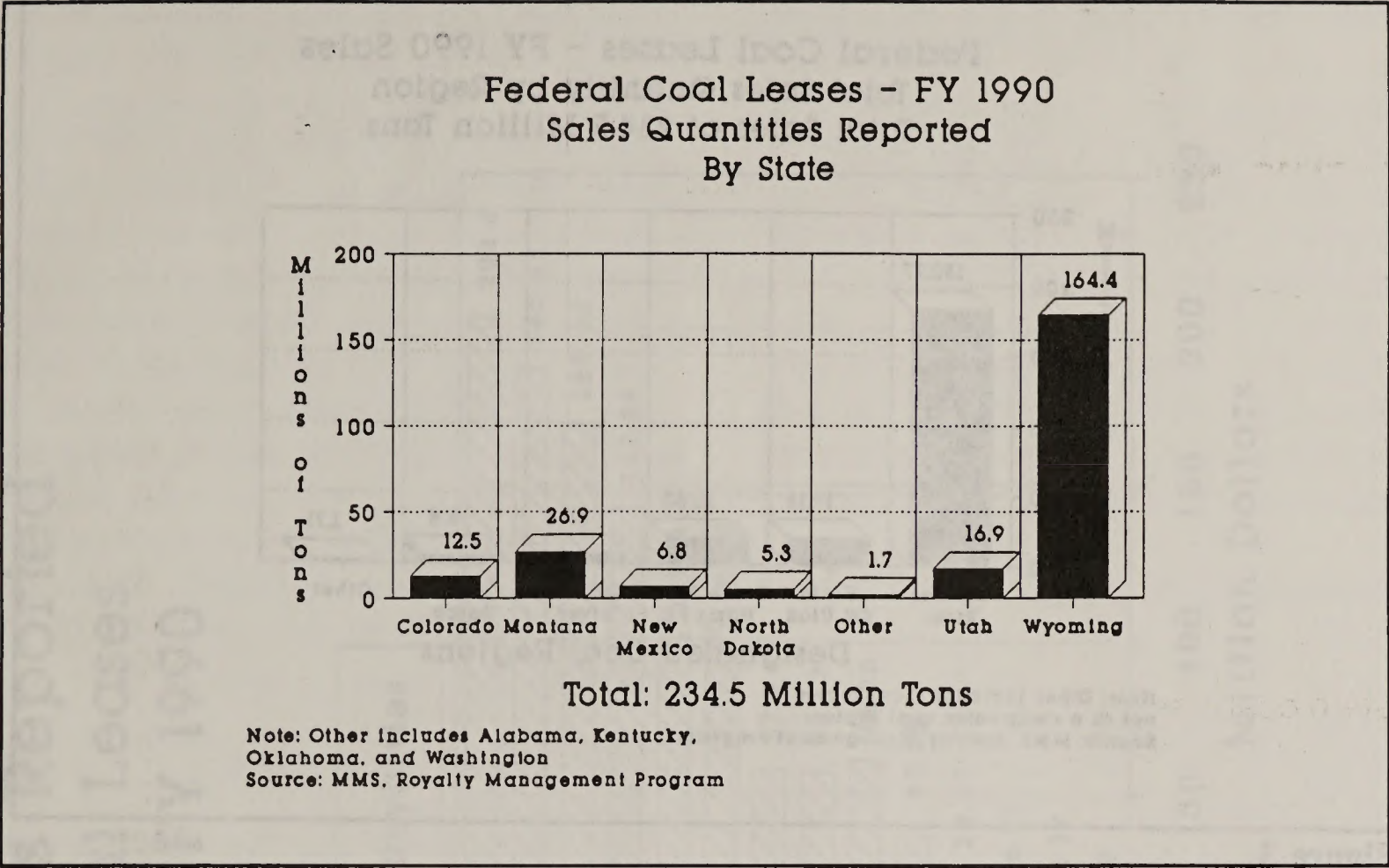
and royalties reported on a State-by-State basis for Federal coal leases in FY 1990. Figures 3 and 4 show sales quantities and royalties broken down by coal producing regions. Figure 5 illustrates the increase in sales and royalties reported on Federal coal leases from FY 1977 through FY 1990.

As of September 30, 1990, there were 493 Federal coal leases for 723,542.47 acres and containing approximately 14.43 billion tons of recoverable coal reserves.

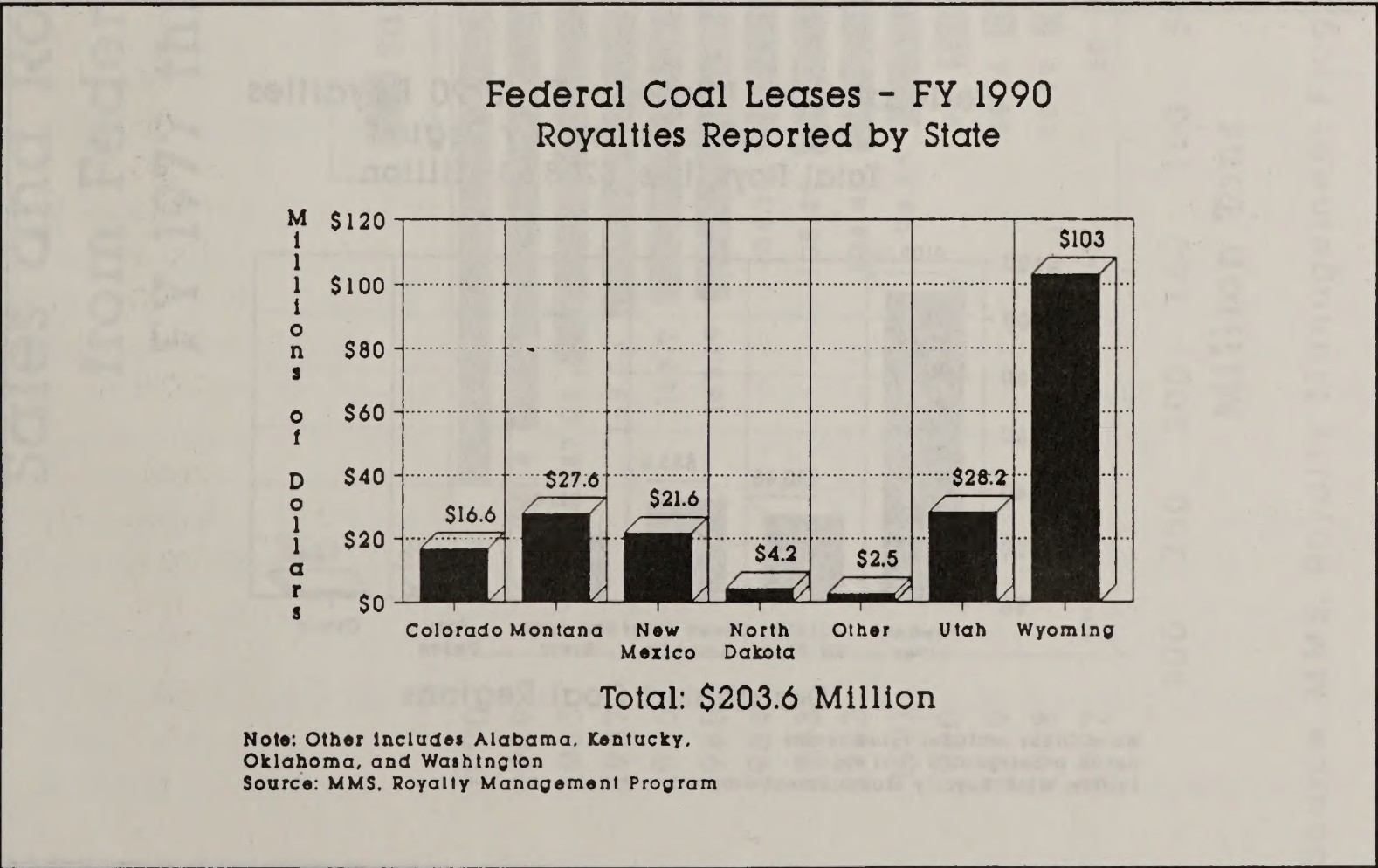
During FY 1990, 15 Federal coal leases were accepted for relinquishment, for 26,532.82 acres and containing approximately 396 million tons of recoverable reserves. At the end of FY 1990, 10 Federal coal leases were pending relinquishment. Also during FY 1990, 11 Federal coal leases were terminated for failure to produce coal in commercial quantities at the end of 10 years. These 11 Federal coal leases were for 12,867.76 acres and contained 40.0 million tons of recoverable reserves.

Reflecting a renewal of interest in leasing Federal coal, six lease sales were held in FY 1990, equalling the entire number of lease sales held in the three previous fiscal years combined. Three of the lease sales were held in Utah, while one each was held in Alabama, Colorado, and Wyoming. Bonus bids totaled \$9.4 million for the 30 million tons of





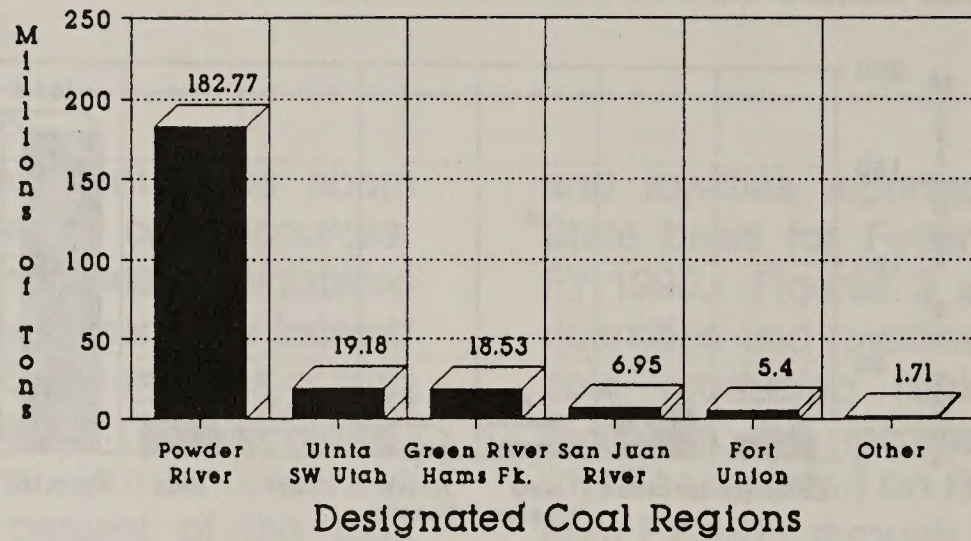
**Figure 1**



**Figure 2**



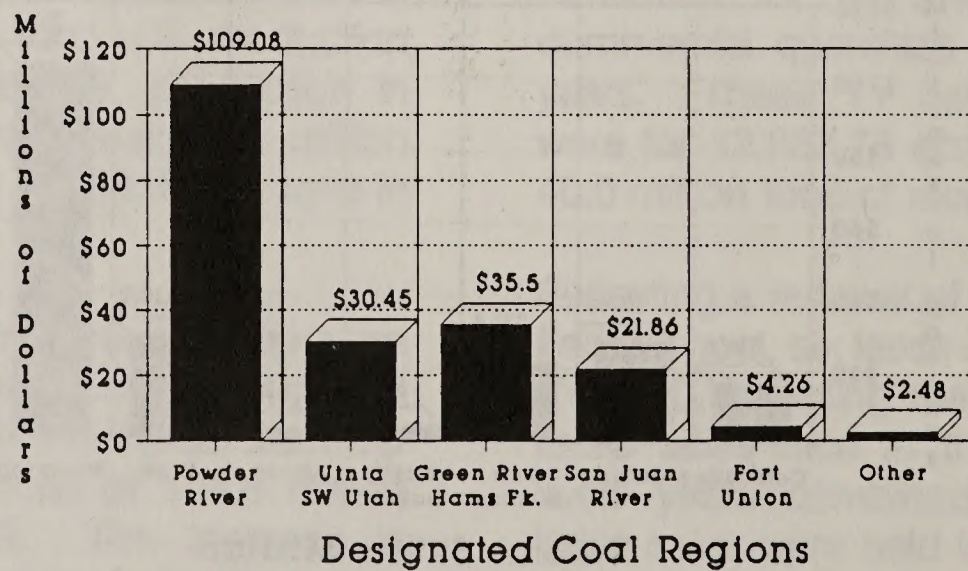
**Federal Coal Leases - FY 1990 Sales**  
**Total Sales Quantity by Region**  
**Total Sales of 234.5 Million Tons**



Note: Other includes those leases not in a designated coal region.  
Source: MMS, Royalty Management Program

**Figure 3**

**Federal Coal Leases - FY 1990 Royalties**  
**Dollars Generated, by Region**  
**Total Royalties: \$203.63 Million**

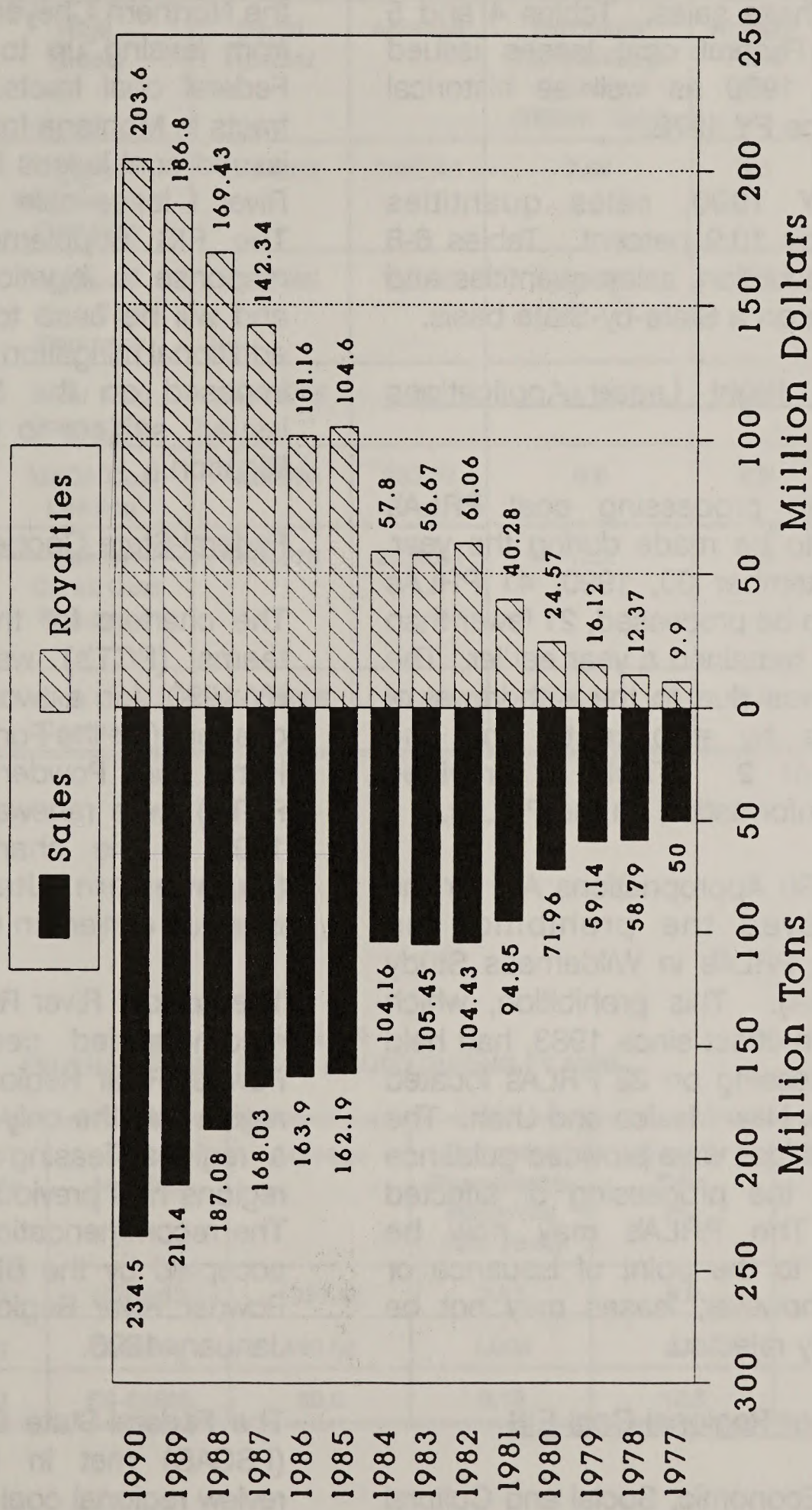


Note: Other includes those leases not in a designated coal region.  
Source: MMS, Royalty Management Program

**Figure 4**



# Sales and Royalties Reported from Federal Coal Leases FY 1977 through FY 1990



Source: MMS, Royalty Management Program

Figure 5



recoverable reserves estimated to exist on these tracts. All six lease sales took place within decertified Federal coal production regions. Table 3 shows the results of these sales. Tables 4 and 5 show the Federal coal leases issued during FY 1990 as well as historical leasing since FY 1978.

During FY 1990, sales quantities increased by 10.9 percent. Tables 6-8 present production, sales quantities and royalty data on a State-by-State basis.

#### Preference Right Lease Applications (PRLAs)

Progress in processing coal PRLAs continued to be made during the year. As of September 30, 1990, 41 PRLAs remained to be processed, 21 fewer than the 62 that remained a year earlier. The reduction was due to the withdrawal of 19 PRLAs by applicants and the rejection of 2. Table 9 provides additional information on the PRLAs.

The FY 1990 Appropriations Act for the DOI removed the prohibition on processing PRLAs in Wilderness Study Areas (WSA). This prohibition, which had been in effect since 1983, had held up all processing on 22 PRLAs located in Montana, New Mexico and Utah. The BLM field offices were provided guidance to resume the processing of affected PRLAs. The PRLAs may now be processed to the point of issuance or rejection; however, leases may not be issued, only rejected.

#### Powder River Regional Coal EIS

The Final Economic, Social and Cultural

Supplement to the Powder River I Regional Coal EIS was completed in July 1990. The EIS Supplement analyzes the economic, social and cultural impacts on the Northern Cheyenne and Crow Tribes from leasing up to 11 Powder River I Federal coal tracts. These include 5 tracts in Montana for which BLM actually issued coal leases following the Powder River I lease sale conducted in 1982. The EIS Supplement was issued in response to litigation of this lease sale and will be used to determine whether additional mitigation measures should be imposed on the 5 leases that were issued, subject to the outcome of the litigation.

#### Federal-State Cooperation

The charters for the five regional coal teams (RCT's) were all renewed in FY 1990, for a two year period. Four charters (for the Fort Union, Green River-Hams Fork, Powder River, and San Juan RCT's) were renewed on September 6, 1990. The charter for the Uinta-Southwestern Utah RCT had been renewed earlier, on October 5, 1989.

The Powder River RCT, in October 1989, recommended decertification of the Powder River Region. At that time, this region was the only one still operating in a regional leasing mode. The other regions had previously been decertified. The recommendation was subsequently accepted by the BLM Director and the Powder River Region was decertified in January 1990.

The Federal-State Coal Advisory Board (FSCAB) met in November 1989 to review regional coal leasing activities,



**TABLE 3**  
**RESULTS OF LEASE-BY-APPLICATION SALES HELD DURING FY 1990**

State	Date of Sale	High Bidder	Serial Number	Acreage	Estimated Recoverable Reserves (Million Tons)	Royalty Rate (%)	Bonus Bid \$/acre
Utah	01/11/90	Cyprus Western Coal Company	U-64263	1987.46	7.63	8.0	\$768
Colorado	04/27/90	National King Coal Company	C-49465	193.08	1.008	8.0	\$526
Alabama	06/12/90	River King Energy Co.	ES-41886	80	0.16	12.5	\$264
Utah	06/28/90	AMCA Coal Leasing	U-66060	933.32	8.8	8.0	\$1773
Utah	06/28/90	Beaver Creek Coal Company	U-64375	2630.81	12.2	8.0	\$2320
Wyoming	09/20/90	Lion Coal Company	W-119606	81.05	0.29	8.0	\$353

**TABLE 4**  
**FEDERAL COAL LEASES ISSUED DURING FY 1990**

State	Effective Lease Date	Serial Number	Acreage	Estimated Recoverable Reserves (Mil. Tons)	Royalty Rate (%)	Bonus Bid (\$/acre)
Utah	04/01/90	U-64263	1987.46	7.63	8.0	\$768
Colorado	09/01/90	C-49465	193.08	1.008	8.0	\$526
Alabama	08/01/90	ES-41886	80.0	0.16	12.5	\$264



**TABLE 5**  
**FEDERAL COAL LEASES ISSUED SINCE FISCAL YEAR 1978**  
**BY FISCAL YEAR**

FISCAL YEAR	NUMBER OF ISSUED LEASES	TOTAL ACREAGE OF ISSUED LEASES	ESTIMATED TOTAL RECOVERABLE RESERVES OF ISSUED LEASES (MIL. TONS)
1978	2	574	3.42
1979	13	9,062	70.78
1980	14	10,376	135.63
1981	15	33,398	295.63
1982	40	84,283	1,406.87
1983	21	28,609	996.07
1984	6	6,595	70.17
1985	6	1,473	6.23
1986	7	15,065	124.07
1987	6	2,615	12.53
1988	1	120	0.85
1989	1	9,905	84.00
1990	3	2,261	8.80
<b>TOTAL</b>	<b>135</b>	<b>213,216</b>	<b>3,215.05</b>

**SOURCE:** U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, Solid Leasable Minerals System, September 30, 1990.



**TABLE 6**  
**TOTAL UNITED STATES COAL PRODUCTION AND FEDERAL PRODUCTION**  
**BY STATE : FISCAL YEAR 1990**

State	United States (Thousand Tons)	Federal (Thousand Tons)
<b>TOTAL</b>	<b>980,689</b>	<b>234,503</b>
Alabama	27,992	641
Alaska	1,582	0
Arizona	11,935	0
Arkansas	70	0
Colorado	17,123	12,464
Illinois	59,267	0
Indiana	33,641	0
Iowa	430	0
Kansas	856	0
Kentucky	167,389	122
Louisiana	2,983	0
Maryland	3,376	0
Missouri	3,378	0
Montana	37,742	26,929
New Mexico	23,702	6,779
North Dakota	29,566	5,304
Ohio	33,689	0
Oklahoma	1,753	168
Pennsylvania	70,596	0
Tennessee	6,480	0
Texas	53,854	0
Utah	20,102	16,879
Virginia	43,006	0
Washington	5,039	783
West Virginia	153,580	0
Wyoming	171,558	164,434

SOURCE: Total U.S. Production - Department of Energy, Energy Information Administration.

Federal Production - Department of the Interior, Minerals Management Service, Royalty Management Program.



TABLE 7  
ROYALTY REVENUES FROM FEDERAL COAL LEASES  
BY STATE: FY 1982 TO FY 1990  
(THOUSAND DOLLARS)

STATE	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990
TOTAL	\$61,063	\$56,666	\$57,798	\$104,597	\$101,145	\$142,337	\$169,430	\$186,813	\$203,630
ALABAMA	4	176	59	0	0	0	0	225	1,764
COLORADO	13,171	12,270	13,121	17,332	20,032	15,032	13,674	14,351	16,634
KENTUCKY	0	0	0	0	0	0	281	423	265
MONTANA	8,783	13,682	7,533	14,626	17,854	38,986	36,636	26,334	27,608
NEW MEXICO	7,841	5,000	6,624	23,884	15,402	10,326	10,134	17,739	21,555
NORTH DAKOTA	745	2,106	1,478	6,344	6,670	5,366	4,709	4,145	4,177
OKLAHOMA	1,111	606	148	33	54	0	25	110	241
UTAH	5,833	7,612	6,005	14,317	12,326	19,721	25,319	19,539	28,200
VIRGINIA	0	0	41	90	0	0	0	0	0
WASHINGTON	13	46	140	80	131	117	94	197	212
WYOMING	23,562	15,168	22,649	27,891	28,676	52,789	78,558	103,750	102,974

NOTE: The statistics for FY 1990 represent sales and royalties reported during FY 1990 and adjustments made during FY 1990 for prior periods. The FY 1990 royalty management statistics may not represent actual production achieved in FY 1990 for the royalty accrued on that production due to adjustments for prior years. These data are unpublished and rounded in part.

SOURCE: U.S. Department of the Interior, Minerals Management Service, Royalty Management Program.



**TABLE 8**  
**SALES QUANTITY FROM FEDERAL COAL LEASES BY STATE**  
**FY 1982 TO FY 1990**  
**(THOUSAND TONS)**

STATE	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990
TOTAL	104,430	105,449	104,150	162,189	163,900	168,027	187,079	211,377	234,503
ALABAMA	2	105	33	0	0	0	0	79	641
COLORADO	9,157	10,795	9,927	10,380	10,121	8,765	9,236	10,701	12,464
KENTUCKY	0	0	0	0	0	0	136	221	122
MONTANA	25,195	11,574	14,520	24,031	22,433	22,864	20,525	21,498	26,929
NEW MEXICO	4,847	2,290	3,048	5,145	4,825	3,225	3,077	5,671	6,779
NORTH DAKOTA	1,190	2,253	1,311	6,271	6,853	6,057	4,846	5,198	5,304
OKLAHOMA	246	101	33	29	47	0	68	65	168
UTAH	7,892	10,124	6,128	11,438	9,480	12,853	15,364	15,535	16,879
VIRGINIA	0	0	14	32	0	0	0	0	0
WASHINGTON	66	231	700	326	654	554	420	691	783
WYOMING	55,835	67,976	68,436	104,537	109,487	113,709	133,407	151,718	164,434

NOTE: The statistics represent sales and royalties reported during FY 1990 and adjustments made during FY 1990 for prior periods. The FY 1990 royalty management statistics may not represent actual production achieved in FY 1990 or the royalty accrued on that production due to adjustments for previous years. This data is unpublished.

SOURCE: U.S. Department of the Interior, Minerals Management Service, Royalty Management Program.



**TABLE 9**  
**CURRENT STATUS OF PRLAs, PRLAs WITHDRAWN OR REJECTED**  
**DURING FY 1990: BY STATE**

State	Number of PRLAs 09/30/89	Acres	PRLAs Withdrawn/ Rejected	Acres	Number of PRLAs 09/30/90	Acres
Colorado	5	10,745	2	4,526	3	6,219
Montana	3	11,987	3	11,987	0	0
New Mexico	26	75,510	9	32,854	17	42,656
Utah	11	38,909	0	0	11	38,909
Wyoming	17	33,613	7	13,918	10	19,695
<b>TOTAL</b>	<b>62</b>	<b>170,764</b>	<b>21</b>	<b>63,285</b>	<b>41</b>	<b>107,479</b>

**SOURCE:** U.S. Department of the Interior, Bureau of Land Management, Division of Solid Mineral Operations, Solid Leasable Minerals System, September 30, 1990.



discuss the long-range market outlook, and to consider whether or not to recommend a long-range coal leasing planning schedule to the Secretary. The Board recommended that a long-range

lease sale plan be deferred because of the slackened demand for Federal coal leasing. The Secretary subsequently adopted this recommendation.



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## **CHAPTER 3**

### **RECOMMENDATIONS/INITIATIVES**

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The following chapter is an addition to the FY 1990 Federal Coal Management Report. This chapter was incorporated to more fully meet requirements under Section 8B of MLA requiring recommendations to the Congress for improvements in management, environmental safeguards and levels of activity from mining operations on Federal coal lands.

#### **ENVIRONMENTAL SAFEGUARDS**

The following initiative has been developed and is under review in the FWS.

##### Wildlife/Habitat Protection:

1. More emphasis on specific stipulations for protection, reclamation, and replacement of wetlands.
2. Followup on recommendations made in previous years to verify their implementation and success.
3. Prevent any runoff from mining sites into permanent watersheds that support aquatic biota.
4. Reduce the amount of coal mining dust drifting into undisturbed habitats.

5. Continue to support re-vegetation management plans that promote biodiversity of wildlife habitat.

6. Stricter enforcement of stipulations for protection of wetlands.

#### **LEVELS OF ACTIVITY**

##### Leasing/Planning

Unlike many BLM programs, energy and mineral programs involve a high percentage of non-discretionary work. Although leasing is a discretionary function, once a lease is issued, the BLM workload to manage the lease becomes non-discretionary and requires that certain post-lease functions be performed. Thus, once a lease is issued, future workload increases. Even during periods when mineral development is at lower levels, post-lease work remains steady.

After minimal Federal coal leasing for several years, a renewal in industry leasing is occurring. The re-newed interest in leasing is not a one-time occurrence but one that is likely to continue. This is evidenced by the 13 lease applications currently on hand at the end of FY 1990 with more anticipated. The need for additional



planning/environmental review work is most critical in the Powder River region of Wyoming and the Carbon and Emery County areas of Utah.

The Clean Air Act Amendments are expected to have a major impact on coal markets and production. In particular, this law could stimulate significantly greater demand for the low-sulfur coals in the West, especially in the Powder River Coal Production Region.

A major component of this legislation is a required reduction of sulfur dioxide emissions, from which coal-fired electric utilities are the primary source. Currently, these emissions total about 23 million tons a year. The 1990 amendments, however, require that by the year 2000, total sulfur dioxide emissions are to be capped at 8.9 million tons. These requirements are expected to spur the demand for western low-sulfur coal.

Some preliminary studies indicate that the Nation may need between 65 and 150 million tons of additional low-sulfur coal to meet the requirements of this legislation by the year 2000. Of this, between 15 and 70 million tons could come from the Powder River Basin. Other Federal coal production regions will also be affected, though the impact on them is expected to total less than 20 million additional tons by the year 2000.

The renewed interest is occurring at a time when the coal budget has fallen, in real dollars, by 62 percent in the last five years, 45 percent in the last three years alone. Also significant has been the decline in the leasing component of the

coal budget as compared to the operations share, which includes inspection and enforcement activities. Leasing expenditures were dominant during most of the 1980's, but in recent years operations activities have become the dominant expenditure. Moreover, the operations activities, which include more than 1,500 inspections annually, are required to be performed.

#### PRLA's

During FY 1991, the BLM will continue to process PRLA's. Some PRLA's are awaiting EIS's in accordance with the revised procedures, others are awaiting submission of additional information connected with final showings, and still others are awaiting BLM's completion of the analyses of the final showing information. The removal of the prohibition on processing PRLA's in WSA's will allow additional progress in this area.

#### Operations - Inspection and Enforcement

There is a requirement that inspections be conducted quarterly on all producing leases and annually on nonproducing leases. Program reviews of this function indicate that while most States are now conducting inspections quarterly, several States are not conducting quarterly production verification on both Federal and Indian leases, licenses, contracts and permits. The Inspector General's office has visited several BLM field offices and has expressed concern that the production verification is insufficiently independent of company supplied data. In addition, independent production verification is not being conducted in



most States (based on FY 1990 operating levels).

### Program Reviews

In FY 1991, BLM plans to continue program review responsibilities by conducting Management Control Reviews (MCR), Alternate Management Control Reviews (AMCR), and Technical Procedures Reviews (TPR). The following program reviews are anticipated for FY 1991:

AMCR - Inspection & Enforcement/  
Production Verification (Federal)

MCR - Inspection & Enforcement/  
Production Verification (Indian)

TPR - Lease Modifications/Bypass

TPR - Diligent Development/Continued  
Operations

TPR - Inspection & Enforcement/  
Production Verification Coal (Indian and  
Federal)

TPR - Exploration Licenses



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## CHAPTER 4

### DEPARTMENT OF JUSTICE - COMPETITION AND ANTITRUST ANALYSIS

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This chapter of the report complies with Section 8B of the MLA, which requires the Attorney General to report to Congress on "competition in the coal and energy industries" in conjunction with the DOI report on the Federal Coal Management Program. One purpose is to provide the economic analysis that is a necessary foundation for the establishment of coal management policies that will promote competition and efficient development in the coal and energy industries. The report is to provide the basis for the analysis the DOJ employs in its review of Federal coal lease issuances, transfers (including assignments), and readjustments under Section 15 of the FCLAA and consequent advice to the Secretary of the Interior on whether any such action would "create or maintain a situation inconsistent with the antitrust laws." The intention of the report is to serve the dual functions of advising Congress of the present state of competition in the coal industry and indicating the competitive principles the DOJ applies in reviewing Federal coal lease issuances, transfers, and readjustments.

The first DOJ report, submitted in May 1978, defined relevant product and geographic markets and set forth an analytical framework for assessing the state of competition in the coal industry.

The report found that coal markets in the United States were workably competitive. The report also enunciated the DOJ's policy of regarding any prospective lease issuance to a lessee with a share of uncommitted, non-Federal reserves in the relevant market in excess of 15 percent as prima facie inconsistent with the antitrust laws. The report gave special attention to the competitive effects of participation in the coal industry of firms that also compete in markets for petroleum or nuclear fuel. Conditions were set out under which such interfuel integration would pose a danger to competition. It was quite clear that these conditions were not met in the case of coal/petroleum integration; coal/nuclear fuel integration was found to pose a somewhat greater competitive danger. Accordingly, a more stringent lease review standard was applied to certain nuclear fuel companies under which a share of uncommitted, non-Federal reserves in the relevant market in excess of 10 percent is considered prima facie inconsistent with the antitrust laws.

In May 1979, the second DOJ report updated several aspects of the first report's analysis and analyzed competition in coking coal markets. To the extent the available information permitted reaching any conclusions, coking coal markets were found to be



workably competitive.

The third DOJ report, in November 1980, analyzed the competitive effects of railroad participation in western coal markets. The report found that there were several conditions that had to be met before participation by railroads in the western coal industry could pose a competitive problem. With the exception of one railroad, it was found that those conditions were not met. In the case of the one exception, Burlington Northern, Inc., it was not clear whether the conditions were met. The DOJ concluded that, for reviewing Federal coal leases, all railroads would be treated the same as coal companies, but leases to Burlington Northern, Inc., would be given special scrutiny.

In March 1982, the fourth DOJ report analyzed the competitive effects of participation of electric utilities in the coal industry, and found that there was a significant danger that electric utilities could circumvent rate regulation through integration into the coal industry. However, whether leasing to any particular utility posed a significant competitive danger depended on a host of regulatory issues unique to that utility. The conclusion stated that leases to electric utilities would be subjected to detailed case-by-case review.

The DOJ's fifth and sixth reports, submitted in December 1982 and April 1983, reconsidered two basic aspects of the first report's analysis. The fifth report focused on the delineation of relevant markets in which to assess the effects of Federal coal lease issuances. Applying the market-delineation principles

embodied in the DOJ's Merger Guidelines, the report concluded that there are three relevant markets in the area of the country in which virtually all Federal coal leasing will occur. Leases in the Powder River Region will be analyzed in a market that consists solely of the Powder River Region. Leases in the Fort Union Region of Montana and the Dakotas will be analyzed in a Northern Plains Market that consists of a combination of the Fort Union Region, the Powder River Region, and all other coal in Montana and the Dakotas. Leasing in the Denver-Raton Mesa, Green River-Hams Fork, San Juan, and Uinta-Southwestern Utah Regions of Colorado, New Mexico, Utah, and southern Wyoming will be analyzed in a Southwest Market that consists of the States of Arizona, Colorado, New Mexico, Utah, and the Green River-Hams Fork Region in Wyoming.

Also, the sixth DOJ report developed revised "universe" figures against which market shares in these three markets would be measured for the DOJ's lease reviews. The universe figures for uncommitted, non-Federal reserves are 56.1 billion tons in the Southwest Market, 42.7 billion tons in the Northern Plains Market, and 17.8 billion tons in the Powder River Market.

Together, these six reports comprise an analysis of competitive conditions in western coal markets and an explanation of the basic determinants of the DOJ's judgments in its statutory review of proposed Federal coal leases. During the past fiscal year, there have been no developments that materially alter the analysis or the conclusions contained in



these reports.

Section 15 of the FCLAA also requires the DOI to consult the DOJ "at each stage in the formulation and promulgation of rules and regulations

concerning coal leasing." DOJ did not advise the Secretary that any of the lease issuances, assignments, or readjustments reviewed during FY 1990 would create or maintain a situation inconsistent with the antitrust laws.

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## **TABLE OF ABBREVIATIONS**

<b>AMCR</b>	<b>Alternative Management Control Review</b>
<b>AVF</b>	<b>Alluvial Valley Floor</b>
<b>BLM</b>	<b>Bureau of Land Management</b>
<b>CFR</b>	<b>Code of Federal Regulations</b>
<b>DOI</b>	<b>Department of the Interior</b>
<b>DOJ</b>	<b>Department of Justice</b>
<b>EA</b>	<b>Environmental Analysis</b>
<b>EIS</b>	<b>Environmental Impact Statement</b>
<b>FCLAA</b>	<b>Federal Coal Leasing Amendments Act</b>
<b>FSCAB</b>	<b>Federal-State Coal Advisory Board</b>
<b>FLPMA</b>	<b>Federal Land Policy and Management Act</b>
<b>FR</b>	<b>Federal Register</b>
<b>FS</b>	<b>Forest Service (USDA)</b>
<b>FWS</b>	<b>Fish and Wildlife Service</b>
<b>FOGRMA</b>	<b>Federal Oil and Gas Royalty Management Act</b>
<b>FY 1990</b>	<b>Fiscal Year 1990 (October 1, 1989 through September 30, 1990)</b>
<b>GS</b>	<b>U.S. Geological Survey</b>
<b>I&amp;E/PV</b>	<b>Inspection &amp; Enforcement / Production Verification</b>
<b>IBLA</b>	<b>Interior Board of Land Appeals</b>
<b>MCR</b>	<b>Management Control Review</b>
<b>MLA</b>	<b>Mineral Leasing Act</b>
<b>MMS</b>	<b>Minerals Management Service</b>
<b>NCRDS</b>	<b>National Coal Resources Data System</b>
<b>NEPA</b>	<b>National Environmental Policy Act</b>
<b>NF</b>	<b>National Forest</b>
<b>NFS</b>	<b>National Forest System</b>
<b>OSM</b>	<b>Office of Surface Mining Reclamation and Enforcement</b>
<b>PRLA</b>	<b>Preference Right Lease Application</b>
<b>RCT</b>	<b>Regional Coal Team</b>
<b>RMP</b>	<b>Resource Management Plan</b>
<b>TPR</b>	<b>Technical Procedures Review</b>
<b>SLMS</b>	<b>Solid Leasable Minerals System</b>
<b>SMAT</b>	<b>Solid Minerals Assistance Team</b>
<b>SMCRA</b>	<b>Surface Mining Control and Reclamation Act</b>
<b>USDA</b>	<b>United States Department of Agriculture</b>
<b>WSA</b>	<b>Wilderness Study Area</b>











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